SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. _____

GARDEN STATE TRANSIT CO., INC.,

Appellant,

v.

UNITED STATES OF AMERICA, *et al.*,

Appellees.

On Appeal from the United States District Court For the District of New Jersey

JURISDICTIONAL STATEMENT

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v.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT

Garden State Transit Lines, Inc. appeals from the judgment of the United States District Court for the District of New Jersey entered on December 16, 1969, dismissing the complaint seeking to set aside and annul findings, decisions and order of the Interstate Commerce Commission (Commission) relating to application filed by appellant, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinions Below

The opinion of the District Court for the District of New Jersey was entered December 16, 1969, and is as yet unreported. The opinion and order are set forth herein as Appendix B.

The report and order of the Interstate Commerce Commission, Division 1, dated January 7, 1969, and served January 16, 1969, is reported at 108 M.C.C. 308. The opinion and order are set forth herein as Appendix C.

The order of the Interstate Commerce Commission, Division 1, upon reconsideration was entered April 22, 1969 and served May 15, 1969 and is set forth herein as Appendix D.

The order of Joint Board No. 3 of the Interstate Commerce Commission served January 29, 1968, is set forth herein as Appendix E.

Jurisdiction

This suit was brought July 10, 1969, in a three judge court pursuant to 5 U.S.C. §551 *et seq.*, 28 U.S.C. §1336 (a), 1398, 2281-2284, 2321-2325 and 49 U.S.C. §17 (9) to annul and to set aside findings, decisions and orders of the Interstate Commerce Commission entered under 49 U.S.C. §307 dated January 7, 1969, and served January 16, 1969; dated April 22, 1969 and served May 15, 1969; dated June 12, 1969 and served June 30, 1969.

The order and opinion of the district court dismissing the complaint were entered December 16, 1969.

Notice of appeal was filed in the District Court for the District of New Jersey on January 29, 1970.

Jurisdiction of the Supreme Court to review this order by direct appeal is conferred by 28 U.S.C. §1253 and §2101

(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *United States v. Capital Transit Company*, 325 U. S. 357, *United States v. Detroit and Cleveland Navigation Company*, 326 U. S. 236; *United States v. Pierce Auto Freight Lines*, 327 U. S. 515; *City of Chicago v. United States*, —— U. S. —— 90, S. Ct. —— 24 L. Ed. 2d 340.

Statutes Involved

The statutes involved in this case are sections 207 and 208(c) of the Interstate Commerce Act 49 U.S.C. §307 enacted August 9, 1935, c. 498, 49 Stat. 551 and 49 U.S.C. §308(c) enacted Aug. 9, 1935, c. 498, 49 Stat. 552 as amended No. 10, 1966, 80 Stat. 1521 and 28 U.S.C. §1336 (a) enacted June 25, 1948, c. 646, 62 Stat. 931 as amended August 30, 1964, §1, 78 Stat. 695, and are set forth herein as Appendix A.

Questions Presented

1. Did the District Court err in approving an order of the Interstate Commerce Commission which failed to consider as elements of public convenience and necessity the national transportation policies, as expressed *inter alia*, in the Motor Carrier Act of 1935, as amended, and legislation authorizing the Interstate Highway System, which were enacted to foster the development of adequate transportation service for growing communities within commuting distance of urban centers as well as policies which favor reduction of urban and highway congestion?

2. Did the failure of the Commission to set forth adequate and accurate findings of fact, conclusions of law, and reasons in support of its order (where the record contained considerable evidence of need for a public passen-

ger service) cause its order to be arbitrary, capricious and an abuse of discretion, and deprive it of the legally required support of substantial evidence in the record as a whole, thus requiring the district court to set it aside?

3. Should the district court have refused to enforce an order of the Commission, it being illegal, arbitrary, an abuse of discretion and without substantial evidence, because it was, at least in part, based upon a legally irrelevant and prejudicial consideration?

Statement

Commission Proceedings

In 1966, the City of Saddle Brook, New Jersey, after spending 5 to 7 years to improve its situation, determined that the establishment of express bus service to and from New York City, about 10 or 15 miles away, would provide a significant convenience to its residents and would aid the economic and population growth of the community. Several area bus carriers were solicited, but only the plaintiff-appellant, Garden State, agreed to try to implement the service. Accordingly, on December 19, 1966, appellant filed an application with the Interstate Commerce Commission under §207 of the Motor Carrier Act, 49 U.S.C. §307 (1964), seeking a Certificate of Public Convenience and Necessity to authorize operations as a common carrier, by motor vehicle, over regular routes, to transport passengers and their baggage, and newspapers, restricted to an express service between New York, New York, and Saddle Brook, New Jersey, which application was assigned Docket No. MC 69260 Sub No. 5.

Protests to the application were filed by Public Service Coordinated Transport on February 21, 1967, which pro-

test was withdrawn on March 30, 1967; by Manhattan Transit Company on February 23, 1967, and by Inter-City Transportation Co., Inc. on March 2, 1967; after the original application had been published in the Federal Register on February 2, 1967.

The two protestants then filed "coat-tail" applications for substantially similar authority, Manhattan Transit on March 17, 1967, which application was assigned Docket No. MC 3700 Sub No. 55, and Inter-City on May 4, 1967, which application was assigned Docket No. MC 668 Sub No. 91.

By order of the Commission served October 12, 1967, all three applications were referred to Joint Board No. 3 for hearing at Newark, New Jersey, on November 13, 1967.

The State of New York waived its right to appear and failed to appear at the heading, and William L. Humphreys of New Jersey, as the sole member of Joint Board No. 3, heard the consolidated applications at Newark, New Jersey, on November 13, 14 and 15, 1967.

By a recommended report and order served January 29, 1968, Joint Board No. 3 found that a need existed for the service and recommended that the applications of Garden State Transit Lines, Inc. and Manhattan Transit Company be denied, and that authority for the service be authorized to Inter-City Transportation Co., Inc.

Exceptions to the recommended report and order of Joint Board No. 3 were served by the applicant, Garden State Transit Lines, Inc. on February 20, 1968, on the basis that its proposed operation would better serve the public convenience and necessity and that Inter-City was financially unfit. Manhattan Transit Company also filed exceptions on February 28, 1968.

By report and order decided January 7, 1969, served January 16, 1969, and reported in 108 M.C.C. 308, the Interstate Commerce Commission, Division 1, found that while the proposed service might result in some convenience, none of the applicants has shown that a public necessity exists for service over additional routes, and denied the applications of Garden State Transit Lines, Inc., the plaintiff, as well as those of Inter-City Transportation Co., Inc. and Manhattan Transit Company.

The plaintiff herein filed a petition for reconsideration on February 24, 1969; Manhattan Transit Company filed its petition for reconsideration on February 21, 1969; Inter-City Transportation Co., Inc. filed its petition for reconsideration on February 24, 1969. On March 14, 1969, the plaintiff replied to the petitions of Manhattan Transit Company and Inter-City Transportation Co., Inc.

By order dated April 22, 1969, served May 15, 1969, the Interstate Commerce Commission, Division 1, denied all petitions.

By petition filed May 29, 1969, the plaintiff filed a petition that the Interstate Commerce Commission, on its own motion, consider the proceedings as one involving an issue of general transportation importance. By order dated June 12, 1969, and served June 30, 1969, the Interstate Commerce Commission, at a general session, denied said petition.

Court Proceedings

On July 10, 1969, appellant filed a complaint in the United States District Court for the District of New Jersey to enjoin the order of the Interstate Commerce Commission on the ground that its denial of the application was arbitrary, not supported by substantial evidence and not in conformity with the law.

A three-judge court was convened consisting of Circuit Court Judge J. Cullen Ganey and District Court Judges James A. Coolahan and Reynier J. Wortendyke, Jr. on August 19, 1969, by William H. Hastie, Chief Judge Third Judicial Circuit.

The applicants Inter-City Transportation Co., Inc., and Manhattan Transit Co. on their motions were permitted to intervene as parties defendant.

The plaintiff, defendants United States of America, Interstate Commerce Commission, and intervening-defendant Inter-City Transportation Co., Inc. filed briefs in the three-judge court.

Oral argument was held on October 30, 1969, before the three-judge court.

By order dated December 15, 1969, entered December 16, 1969, the court dismissed the complaint.

The Questions Are Substantial

1. At first blush it may be questioned why the transportation problems of the 18,000 residents of Saddle Brook, New Jersey merit the attention of this national Supreme Court. But the issues in this case, the public policies at stake, epitomize some of the most significant problems facing our urban society: over-crowded cities, inadequate public transportation, congested highways, all contributing to the pollution of the atmosphere, and a federal agency unwilling to fulfill its statutory duties to protect the public interest by taking cognizance of these matters in the course of its regulatory functions.

Saddle Brook is one of the many communities throughout the United States that was brought closer to a central metropolitan area by the Interstate Highway System. By

using a relatively small portion of the approximately 41,000 miles of new interstate highways, the "Saddle Brooks" of the nation have now become sites for businesses requiring a metropolitan market or work force, as well as less congested but accessible residential areas for those who work or shop in the central city. Thus, Interstate 80 by its new 8 lanes has brought hope for growth and progress to the formerly largely self-contained residential township of Saddle Brook. At the same time it has provided an escape valve to relieve some of the scarcity of land for housing, businesses and traffic in New York City and nearby communities.

Thus, at the urgency of the community, its Chamber of Commerce, new manufacturers, workers and residents, the appellant filed this application proposing an express bus trip of 15 to 20 minutes between Saddle Brook and New York City. Existing transportation, including that claimed to be presently provided by the protestants below, as well as that proposed in their coat-tail applications, takes considerably longer and is less convenient than that proposed by appellant-Garden State. The community has already progressed to a limited extent. At the date of the hearings two large factories and two motels have been erected adjacent to Interstate 80. Other large plants and office buildings are in the planning process. Lack of adequate transportation, however, is delaying further progress.

A brief summary of the testimony of public witnesses presented by the appellant discloses: a manufacturer with 350 employees desires service for them; another manufacturer of 300 employees at an annual expense of $25,000.00, now leases two buses and hires drivers to assure continuity of employment. A hotel requires service for its guests and diners. Several of the employees at the plants

are non-drivers and require this special service. An officer of the Saddle Brook Chamber of Commerce and the Mayor of this municipality testified to the need of the service to serve its citizens, and to retain and attract new industries. They require this express bus service to permit expansion. The applicant amended its request to meet the needs and desires of the community.

The express bus service proposed by the appellant would not only meet these needs of the community but would reduce the need of Saddle Brook workers and residents to rely upon private automobile transportation, thus relieving to some extent parking problems and traffic congestion, both on the highways and in the cities, which, in turn, may make a small but important contribution to the reduction of pollution of the environment. Judicial notice may be taken of the success of the Metroliner rail service providing express public transportation between New York and Washington.

The failure of the Interstate Commerce Commission to take account of these factors not only ignores the public's convenience and necessity, but frustrates the intentions of Congress in authorizing the Interstate Highway System to provide a more efficient network of intercommunity travel, and in enacting the Motor Carrier Act to provide, *inter alia*, sound and adequate public transportation services for the benefit of small and growing communities as well as large ones. The Commission's action also ignores an opportunity to contribute to the national goals of decentralized community growth and reduction in urban overcrowding and traffic congestion.

2. The failure of the Commission to make adequate findings on the basic principles of public convenience and necessity, especially in the face of ample evidence demon-

strating such, violates the minimum requirements of administrative procedure and deprives its order of the requisite substantial evidence and warrant in law. Thus, the District Court erred in denying relief to the appellant.

The Administrative Procedure Act provides:

> "* * * The record shall show the ruling upon each such finding, conclusion or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusion, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof." 5 U.S.C. 557.

This section of the Administrative Procedure Act applies to orders of the Interstate Commerce Commission issued as a result of a petition for reconsideration and rehearing, as in the cause herein. See *Norfolk Southern Bus Corp. v. United States, et al*, 96 F. Supp. 756, 760; *Inter-City Transportation Co. v. United States*, 89 F. Supp. 441; *Pinkett, et al. v. United States*, 105 F. Supp. 67.

The law was clearly set forth in *Inland Motor Freight v. United States*, 60 F. Supp. 520 at p. 523 wherein the court stated it was convinced that the case must be remanded to the Commission so that the necessary basic or essential findings in proper and definite form may be made; in which cause the court carefully analyzed and cited the many decisions of this Supreme Court that judicial review is provided that the congressional policies be executed. See also *Lang Trans. Corporation v. United States*, 75 F. Supp. 915; *Florida v. United States*, 282

U. S. 194, 51 S. Ct. 119, 75 L. Ed. 291; *United States* v. *Baltimore & O. R. Co.*, 293 U. S. 454, 464, 55 S. Ct. 268, 79 L. Ed. 587, 594; *United States* v. *Chicago M. St. P. & P.R. Co.*, 294 U. S. 499, 510, 511, 55 S. Ct. 462, 79 L. Ed. 1023, 1031, 1032; *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, 488, 62 S. Ct. 722, 86 L. Ed. 971, 982.

These cases require that the Commission adequately express its findings and supportive reasoning and facts. Yet the Commission's report in the instant case contains no such findings on the basic issues of public need and demand, adequacy of existing service, or effect upon existing carriers and the public interest.

The Joint Board, which heard this cause, found that convenience and necessity were shown, and that the proposed service was responsive to a public need. The Board recommended authority, not to appellant, but to one of the other applicants. All other parties filed exceptions, and the Commission denied all applications. All three applicants sought reconsideration, which was denied. In the three-judge court, however, only the applicant appealed; the other carriers did not pursue their requests but intervened as defendants.

The Commission in *Pan American Bus Lines*, 1 M.C.C. 190, established the criteria for determining "convenience and necessity", which it has ever since adhered to:

> (1) "Will the new operation or service serve a useful public service responsive to a public need or demand?"

There are no specific findings or analysis of this question in the Commission's report, although the testimony of the public witnesses supports the conclusion of the Joint Board that the service is responsive to a public need. The Commission merely concludes that:

> "Under the circumstances presented in this proceeding, however, we are convinced that while the proposed service might result in some conveniences, none of the applicants has shown that a public necessity exists over additional routes."

Should not the Commission explain its finding? What is "some convenience"?

(2) Can the public be served by the existing lines or carriers?

Does the Commission answer this second test?

It states:

> "Saddle Brook is a relatively compact area and the small measure of additional convenience that might accrue to some persons if a bus route should be located five blocks nearer to their individual points of interest does not persuade us that any real inadequacies exist in the services that are presently available."

The testimony is clear that some points are about a mile from existing service, not five blocks. Again, what is a "small measure of additional convenience"? The Commission does not answer the basic question as to whether the public can be served by existing lines or carriers, and its acknowledgment of even a "small measure of additional convenience" demonstrates that the public cannot be *adequately* served by such carriers.

(3) Whether it can be served by applicant without endangering or impairing the operations of existing carriers contrary to the public interest.

This question is wholly unanswered. Should there not have been a finding or answer?

Appellant is entitled to basic findings. If existing service would be affected by the proposed services, further inquiry is required as demonstrated by the following cases:

Is applicant offering a service, which admittedly, is now not available to the area? *Monarch Associates*, 107 M.C.C. 277. Does the application suggest a truly new and desired concept, with the risk of some loss of business to established operations, and if so, though superficially competitive, is the public entitled to the improved service? See *The Arrow Line, Inc.*, 103 M.C.C. 195, on further consideration following *The Arrow Line* v. *United States*, 256 F. Supp. 608. If public convenience and necessity justify more alert competition, it is not grounds for objection that some of the protesting carriers may lose revenue. *Blodgett Uncrated Furniture Service* v. *United States*, 288 F. Supp. 591, 598. The Commission has failed to make any of these findings, or to consider these matters.

Universal Camera Corporation v. *N.L.R.B.*, 340 U. S. 474, established that the courts must review the whole record or such portions as may be cited by any party (5 U.S.C. 706) in determining whether an agency finding is supported by substantial evidence.

The courts must now assume more responsibility for the reasonableness and fairness of the Boards; and the three-judge court, by its brief decision, failed to exercise this responsibility. To quote briefly from *Burlington Truck Lines* v. *United States*, 371 U. S. 456, 9 L. Ed. 207, 83 S. Ct. 239:

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion."

Citing from *Jacob Siegel Co. v. Federal Trade Commission*, 327 U. S. 608, 613, 614, 90 L. Ed. 888, 893, 66 S. Ct. 758.

> "Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.'"

The court below failed to examine the record or to analyze the vague report of the Commission. In *McLean Trucking Co. Inc. v. United States*, 63 F. Supp. 829, the court stated that while the Commission is the agency to which Congress assigned the duty of hearing the evidence and deciding public convenience and necessity, it cannot act arbitrarily or capriciously in considering the evidence.

The only issue which the Commission was called upon to determine was "will the service be required by the present or future public convenience and necessity" (U.S.C. 307c). An applicant is not required to show an urgent need or necessity. *Minneapolis Van*, 6 M.C.C. 477, 480. This applies not only to present but also future necessity. *Square Transit Co.*, 48 M.C.C. 17, 21.

Norfolk-Southern Bus Corp. v. United States, 96 F. Supp. 756, 760-1, aff'd. 340 U. S. 802 clearly supported the view that if public convenience and necessity are found to justify more alert competition, it is not grounds for objection that some of the protesting carriers might lose revenue.

The cases are more fully discussed in *Nashua Motor Express, Inc. v. United States*, 230 F. Supp. 646 at 652 and 653.

3. This cause presents a further substantial issue, not yet ruled upon by this court. In the proceedings before the Commission, two competing motor carriers (Inter-City and Manhattan) filed 'coat-tail' applications for similar authority: which were also denied by the Commission. Their interests, it seems conclusively, were to prevent applicant from obtaining incidental charter rights. A study of their testimony clearly demonstrates that they have no desire to perform the service, but by filing applications, they were able to confuse and cloud the issues. One of the applicants presented no public witnesses, and the other only two additional riders.

The vagueness and non-responsiveness of the Commission's report is also illustrated by their mention of this extraneous matter. Prior to January 1, 1967, 49 U.S.C. §308(e) provided that any common carrier by motor vehicle transporting passengers may transport special or chartered parties. The application herein was filed prior to January 1, 1967. It is clear by commission and court precedent that the issue of the incidental charter rights could not be considered. *See Baltimore & Annapolis Railroad Company—Extension Washington, D. C.*, 79 M.C.C. 123. *Connecticut-New York Airport Bus Co.*, 107 M.C.C. 250. *Billy R. Hallum*, 107 M.C.C. 891; *Safeway Trails v. United States*, 176 F. Supp. 201, aff'd. 361 U. S. 86, 80 S. Ct. 159, 4 L. Ed. 2nd 116.

Despite its immateriality, the Commission in its report apparently gave some weight to this issue, for it states, without any modifying comment:

> "Most of Garden State's present operations involve charter service and if it were authorized to perform the proposed service it would obtain the incidental right to conduct charter operations on traffic

originating at New York City as well as Saddle Brook."

Since this brief statement appears without any explanation, conclusion or finding, might not this Court presume, in effect, that the Commission has reasoned that: "Perhaps Garden State, a fit carrier, has shown a need for the service which is responsive to a public need, but if we grant the authority it will automatically obtain valuable charter rights. It may not affect the existing carriers on the route proposed, but could divert some of their charter activity, and since we cannot legally prevent this because the application was filed before January 1, 1967, we can nevertheless do so by denying the application."

This inference is made more compelling by the failure of the other contesting carriers to seek review of the Commission order, though one had been recommended for the authority by the Joint Board, and to intervene, instead, as defendants supporting the Commission's denial in the appellant's three-judge court action.

The Commission's brief opinion might have been more convincing if it had reviewed the testimony of the public witnesses in light of the criteria of public convenience and necessity, instead of discussing the legally irrelevant issue of charter rights.

CONCLUSION

The order of the Interstate Commerce Commission, being completely lacking in its findings, and by its evaluation of the testimony, is not in conformity with law, is not supported by substantial evidence, and is otherwise illegal, arbitrary, capricious and an abuse of discretion. If the record is canvassed, this Court should reach the conclusion that the Commission has not performed its function under law.

Probable jurisdiction should be noted and the judgment below reversed. Cf. *United States, et al* v. *Dixie Highway Express*, 389 U, S. 409 (1967).

Respectfully submitted,

HERMAN B. J. WECKSTEIN
Attorney for Appellant

[APPENDIX FOLLOWS]

APPENDIX A

Statutes Involved

49 U.S.C. §307:

(a) Subject to section 310 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways. Feb. 4, 1887, c. 104, Pt. II, §207, as added Aug. 9, 1935, c. 498, 49 Stat. 551.

49 U.S.C. §308:

(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this chapter may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed.

Appendix A

(d) A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or to transport baggage of passengers in a separate vehicle. Feb. 4, 1887, c. 104, Pt. II, §208, as added Aug. 9, 1935, c. 498, 49 Stat. 552.

28 U.S.C. §1336:

Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission. June 25, 1948, c. 646, 62 Stat. 931.

49 U.S.C. §308 (as amended):

(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this part pursuant to an application filed on or before January 1, 1967, or under any reissuance of the operating rights contained in such certificate, may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed.

As amended Nov. 10, 1966, Pub. L. 89-804, 80 Stat. 1521.

APPENDIX B

Opinion and Order of the Court Below

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 793-69

GARDEN STATE TRANSIT LINES, INC.,

Plaintiff,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants.

Per Curiam:

This matter came before this Court, constituted pursuant to 28 U.S.C. §2284, on a final hearing of plaintiff's complaint seeking a review of an Order of the Interstate Commerce Commission.

Having reviewed the record, the briefs filed and the oral arguments of counsel, the court finds substantial evidence that the conclusions and Order of the Commission were rational and reasonably inferable from the evidence. In accord with the standard set out in *Department Store Food Corp. of Pa. v. N.L.R.B.*, 415 F. 2d 74 (3d Cir. 1969), the relief sought in the complaint should be denied.

Appendix B

It is, on this 15 day of December, 1969, ORDERED that the complaint in this action be and the same is hereby dismissed, without costs.

J. CULLEN GANEY
Senior Circuit Judge

REYNIER J. WORTENDYKE, JR.
District Judge

JAMES A. COOLAHAN
District Judge

APPENDIX C

Opinion and Order of the Interstate Commerce Commission

Served January 16, 1969

No. MC-69260 (Sub-No. 5)[1]

GARDEN STATE TRANSIT LINES, INC., EXTENSION-SADDLE BROOK, N. J.

Decided January 7, 1969

In each proceeding, public convenience and necessity found not shown to require operation by applicants as common carriers by motor vehicle, of passengers and their baggage, and of express and newspapers when moving in the same vehicle with passengers, over described routes between New York, N. Y., and Saddle Brook, N. J. Applications denied.

Herman B. J. Weckstein for applicant in No. MC-69260 (Sub-No. 5).

Robert E. Goldstein for applicant in No. MC-3700 (Sub-No. 55).

Edward F. Bowes for applicant in No. MC-668 (Sub-No. 91).

Herman B. J. Weckstein, Robert E. Goldstein, and Edward F. Bowes for protestants in one or more of the proceedings.

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[1] This report also embraces Nos. MC-3700 (Sub-No. 55), Manhattan Transit Company Extension-Saddle Brook, N. J., and MC-668 (Sub-No. 91), Inter-City Transportation Co., Inc., Extension-Saddle Brook, N. J.

Appendix C

Report of the Commission.

Division 1, Commissioners Murphy, Deason, and Burke

Deason, *Commissioner*:

These three proceedings involve substantially similar applications, were heard on a consolidated record, and were the subject of a single report and recommended order. They also will be disposed of here in a single report. Exceptions to the order recommended by the joint board were filed separately by two the applicants, and repiles to the exceptions of one of these applicants were filed separately by the other two applicants. Our conclusions differ somewhat from those recommended.

As amended at the hearing; the three applicants, Garden State Transit Lines, Inc., Manhattan Transit Company, and Inter-City Transportation Co., Inc., hereinafter referred to by short titles, seek authority as motor common carriers of passengers and their baggage, and of express and newspapers in the same vehicle with passengers, between New York, N. Y., and Saddle Brook, N. J., over regular routes, as described in the appendix hereto. Garden State's application is opposed by the other two applicants, and it opposes their applications. Manhattan and Inter-City do not oppose one another.

As stated by the joint board at the outset of its report, the issue involved in this proceeding is "which, if any, of the three applicants should be authorized to operate between New York City and Saddle Brook." The joint board recommended that Inter-City's application be granted.

On exceptions Manhattan contends that because of the current bankruptcy proceedings involving Inter-City, Man-

hattan's application should also be granted in order to assure a stable and continuing further service. Garden State contends on exceptions that Inter-City is no longer a legal entity; that the receiver appointed to operate Inter-City as a result of the bankruptcy proceedings should have been substituted as applicant in place of Inter-City; that it is apparent that Inter-City is hopelessly insolvent and therefore unfit to receive the authority sought; and that Inter-City's and Manhattan's primary interest in these proceedings is to prevent Garden State from receiving the incidental charter rights which would accompany a grant of regular-route authority.[2] Garden State further contends that Inter-City's questionable status as a carrier and its lack of fitness preclude a grant of authority to that carrier and it urges that exhibit No. 10, rejected by the joint board, be admitted into evidence.[3]

In its reply, Inter-City asks that the details from rejected exhibit No. 10, included in Garden State's exceptions, be stricken. It also points to its balance sheet and profit and loss statement and states that these exhibits indicate that it is financially sound. It further claims that it is a proper party to this proceeding and that it is the most likely and logical carrier to be authorized to perform the proposed service.

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[2] The application of Garden State was filed prior to the amendment of section 208(c) of the Interstate Commerce Act and hence, the incidental charter provisions formerly contained in that section are still applicable as to that carrier.

[3] Exhibit No. 10 purports to show the result of a questionnaire to the public asking whether they desired service at Saddle Brook. The exhibit does not show whether interstate or intrastate service would be involved. In view of our conclusions herein, no useful purpose would be served by consideration of the exhibit and Garden State's request, therefore, is denied.

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Manhattan contends, in reply that the questionable nature of Garden State's intentions compel the conclusion that the established carriers are far more capable of providing the quality and degree of service that is required; and that Saddle Brook should have that service which is most suitable, responsible and reliable.

The evidence, the Board's recommendations, the exceptions and the replies have been considered. Although we disagree in part with the board's ultimate conclusions, we find the board's statement of facts to be correct in all material respects and, as supplemented herein, we adopt it as our own. Only those facts and matters necessary to dispose of the issues will be restated. Those matters raised in the pleadings and not specifically discussed herein, have been considered and found to be without merit or not determinative of the issues involved herein.

Saddle Brook is a township of approximately 18,000 persons located in northern New Jersey. It is about 20 minutes in transit time from New York City via the George Washington Bridge, and about 30 minutes via the Lincoln Tunnel. Although some Saddle Brook industries employ New York City residents, the normal flow of passengers is into New York City and return to Saddle Brook. Two of the applicants, Inter-City and Manhattan, already operate between portions of Saddle Brook and New York City. Garden State does not. The proposed routes would form a loop around the central portion of Saddle Brook, whereas Manhattan's and Inter-City present routes generally run nearer the edges of the town.

Inter-City's routes in Saddle Brook are more extensive than those of Manhattan, and its present route in Saddle Brook is closest, sometimes within a few blocks, to the

route here proposed. Indeed, Inter-City's present route adjoins the proposed route in Saddle Brook at two intersections. Inter-City presently operates to New York City via both the George Washington Bridge and the Lincoln Tunnel.

Manhattan is authorized to operate between New York City and points on an extensive network of regular routes in northern New Jersey, via both the George Washington Bridge and the Lincoln Tunnel. As indicated earlier, it now operates between a portion of Saddle Brook and New York City. Its existing route in Saddle Brook is approximately five blocks from the proposed route at the shortest distance, and it operates another route in an adjacent community, which is approximately one block from Saddle Brook. Manhattan would tack the proposed route with present routes, over which it operates numerous schedules during nonrush hours. It thus could pick up passengers in Saddle Brook and New York City and at intermediate points as well. It believes that no busline could profitably serve Saddle Brook only in nonrush hours. Manhattan would operate whatever express service might be required during rush hours, and it would provide services to uptown New York City via the George Washington Bridge and to downtown New York City via the Lincoln Tunnel.

Most of Garden State's present operations involve charter service and if it were authorized to perform the proposed service it would obtain the incidental right to conduct charter operations on traffic originating at New York City as well as at Saddle Brook. Garden State is authorized to provide regular-route service between points such as Port Jervis, N. Y., Stroudsburg, Pa., Montague, N. J., Milford, Pa., and Camp Kittatiny, N. J. However, serv-

ice has been provided between these points only in the summer months. It has provided regular-route service, for approximately 2 weeks prior to the hearing, under recently-granted authority, between Picatinny Arsenal, N. J., on the one hand, and, on the other, Port Jervis and Stroudsburg. This is the only daily, regular-route service it now performs. If authority is granted herein it plans to provide an express service via the George Washington Bridge, serving no intermediate points between New York City and Saddle Brook.

Those witnesses who appeared in support of the application base their need for additional service on the fact that existing motorbus routes are five or six blocks distant from the specific points at which they desire service. Two of the applicants now operate between Saddle Brook and New York and it would appear that their principal interest in these applications is to prevent Garden State from entering Manhattan's and Inter-City's area of service.

Although it is usually the policy of this Commission to avoid the restriction of regular-route passenger authority in terms of local streets within the communities served, this does not apply to operations conducted in the New York City and adjacent northern New Jersey area, *see Administrative Ruling No. 102*, 82 M.C.C. 581, 594. Accordingly, applicants Manhattan and Inter-City may not alter their existing local route structure without first obtaining specific authority from this Commission. Under the circumstances presented in this proceeding, however, we are convinced that while the proposed service might result in some convenience, none of the applicants has shown that a public necessity exists for service over additional routes.

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Saddle Brook is a relatively compact area and the small measure of additional convenience that might accrue to some persons if a bus route should be located five blocks nearer to their individual points of interest does not persuade us that any real inadequacies exist in the services that are presently available. No justification is shown which would warrant the entry of Garden State into the Saddle Brook area of service nor has need been shown which would warrant an expansion of the route structure now operated by Manhattan and Inter-City. Under these circumstances we are convinced that the existing service is not shown to be inadequate and we believe that each of the respective applicants has failed to sustain the burden of proving that the public necessity require the proposed service. Accordingly, we conclude that the respective applications should be denied.

Findings

In each proceeding we find that applicants have failed to establish that the present and future public convenience and necessity require the proposed operations; and that the applications should be denied.

Appendix

Authority sought:

In No. MC-62230 (Sub-No. 5), by Garden State Transit Lines, Inc., of Garfield, N. J., filed December 19, 1966. Passengers and their baggage, and newspapers in the same vehicle with passengers, restricted to an express service, between New York, N. Y., and Saddle Brook, N. J. (1) from 178th Street and Fort Washington Avenue in New York across the George Washington Bridge to Interstate Highway 95; thence over Interstate Highway 95

to its intersection with Interstate Highway 80; thence over Interstate Highway 80 to Pehle Avenue, Saddle Brook, N. J., exit; thence over Pehle Avenue to its intersection with Saddle River Road; thence from said intersection of Pehle Avenue and Saddle River Road over said Pehle Avenue to Midland Avenue; thence over Midland Avenue to its intersection with Erie Street; thence over Erie Street to its intersection with Market Street; thence over Market Street to its intersection with Mayhill Street; thence over Mayhill Street to its intersection with Interstate Highway 80; and (2) return as follows: over Mayhill Street to its intersection with Erie Street; thence over Market Street to its intersection with Erie Street; thence over Erie Street to its intersection with Midland Avenue; thence over Midland Avenue to its intersection with Pehle Avenue; thence over Pehle Avenue to its intersection with Interstate Highway 80; thence over Interstate Highway 80 to its intersection with Interstate Highway 95; thence over Interstate Highway 95 across the George Washington Bridge to the place of beginning, serving no intermediate points.

In No. MC-668 (Sub-No. 91), by Inter-City Transportation Co., Inc, of Paterson, N. J., filed May 4, 1967. Passengers and their baggage, and express and newspapers, in the same vehicle with passengers, (1) between New York, N. Y., and Saddle Brook, N. J., from New York over Interstate Highway 95 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction Interstate Highway 80 Saddle Brook Ramp to Pehle Avenue, and return over the same routes, serving all intermediate points for the purpose of joinder only; and (2) between points in Saddle Brook, N. J., (a) from the junction of Interstate Highway 80 Saddle Brook Ramp and

Appendix C

Pehle Avenue over Pehle Avenue to junction Saddle River Road; thence over Saddle River Road to junction Mayhill Street; thence over Mayhill Street to junction Market Street; thence over Market Street to junction Erie Avenue; thence over Erie Avenue to junction Midland Avenue; thence over Midland Avenue to junction Pehle Avenue; thence over Pehle Avenue to junction Interstate Highway 80 Saddle Brook Ramp; and return over the same route, serving all intermediate points, and (b) from junction to Saddle River Road and Market over Market Street to junction Mayhill Street, and return over the same route, serving no intermediate points, subject to the restriction that transportation from junction of Saddle River Road and Market Street, over Market Street to Mahill Street, will be for operating convenience only. No passengers will be discharged or picked up on such portion of the proposed route, excluding the junction of Saddle River Road and Market Street and Mayhill Street and Market Street.

In No. MC-3700 (Sub-No. 55), Manhattan Transit Company, of East Paterson, N. J., filed March 17, 1967. Passengers and their baggage, and express and newspapers in the same vehicle with passengers, between New York, N. Y., and Saddle Brook, N. J., (1) from New York, N. Y., over Interstate Highway 95 to the junction of Interstate Highway 80; thence over Interstate Highway 80 to junction of Interstate Highway 80 Saddle Brook Ramp in Saddle Brook, N. J., thence over Interstate Highway 80 Saddle Brook Ramp to Pehle Avenue, and return over the same route; and (2) from the junction of Interstate Highway 80 Saddle Brook Ramp and Pehle Avenue in Saddle Brook, over Pehle Avenue to junction Saddle River Road; thence over Saddle River Road to junction

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Mayhill Street; thence over Mayhill Street to junction Market Street; thence over Market Street to junction Erie Street; thence over Erie Street to junction Midland Avenue; thence over Midland Avenue to junction Pehle Avenue; thence over Pehle Avenue to junction Interstate Highway 80 Saddle Brook Ramp. The above route to be operated in both directions; and, (3) from the junction of Palisade Avenue and Interstate Highway 80 Ramp, in Bogota, N. J., over Interstate Highway 80 Ramp to junction of Interstate Highway 80, and return over the same route, serving no intermediate points on routes 1 and 3 above, except for the purpose of joinder and serving all intermediate points on route 2 above, except points between the junctions of Pehle Avenue and Liberty Street and Mayhill Street and Rochelle Parkway.

ORDER

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 7th day of January 1969.

No. MC-39260 (Sub-No. 5)

GARDEN STATE TRANSIT LINES, INC., EXTENSION—SADDLE BROOK, N. J.

No. MC-3700 (Sub-No. 55)

MANHATTAN TRANSIT COMPANY EXTENSION—SADDLE BROOK, N. J.

No. MC-668 (Sub-No. 91)

INTER-CITY TRANSPORTATION CO., INC. EXTENSION—SADDLE BROOK, N. J.

Appendix C

Investigation of the matters and things involved in these proceedings having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said applications be, and they are hereby, denied, and that the motion to strike certain portions of the exceptions of Garden State Transit Lines, Inc., be, and it is hereby, denied for the reason set forth in the said report.

By the Commission, Division 1.

H. NEIL GARSON,
Secretary

[SEAL]

APPENDIX D

Orders on Reconsideration of the Interstate Commerce Commission

Service Date
May 15, 1969

ORDER

At a Session of the Interstate Commerce Commission, Division 1, Acting as an Appellate Division, held at its office in Washington, D. C., on the 22nd day of April, 1969.

No. MC-69260 (Sub-No. 5)

GARDEN STATE TRANSIT LINES, INC., EXTENSION—
SADDLE BROOK, N. J.
(Garfield, N. J.)

No. MC-3700 (Sub-No. 55)

MANHATTAN TRANSIT COMPANY EXTENSION—
SADDLE BROOK, N. J.
(East Paterson, N. J.)

No. MC-668 (Sub-No. 91)

INTER-CITY TRANSPORTATION CO., INC., EXTENSION—
SADDLE BROOK, N. J.
(Paterson, N. J.)

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition of applicant in No. MC-3700 (Sub-No. 55), filed February 18, 1969, for reconsideration;

(2) Petition of applicant in No. MC-668 (Sub-No. 91), filed February 24, 1969, for reconsideration;

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(3) Petition of applicant in No. MC-69260 (Sub-No. 5), filed February 24, 1969, for reconsideration;

(4) Reply by Garden State Transit Lines, Inc., protestant, filed March 17, 1969, to petition in (1) and (2) above;

and good cause appearing therefor:

It is ordered, That the said petitions be, and they are hereby denied, for the reason that the findings of Division 1 in its report and order of January 7, 1969, are in accordance with the evidence and the applicable law.

By the Commission, Division 1, Acting as an Appellate.

[SEAL]

H. NEIL GARSON,
Secretary

Service Date
June 30, 1969

ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C. on the 12th day of June, 1969.

No. MC-69260 (Sub-No. 5)

GARDEN STATE TRANSIT LINES, INC. EXTENSION—
SADDLE BROOK, N. J.
(Garfield, N. J.)

Upon consideration of the record in the above-entitled proceeding, and of petition of applicant, filed May 29,

Appendix D

1969 for a determination and announcement that the proceeding involves an issue of general transportation importance; and good cause appearing therefor:

It is ordered, That the said petition be, and it is hereby, denied for the reason that, in the judgment of the Commission, no issue of general transportation importance is involved.

By the Commission.

H. NEIL GARSON,
Secretary

[SEAL]

APPENDIX E

Recommended Report and Order of Joint Board No. 3

INTERSTATE COMMERCE COMMISSION

Served January 29, 1968

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 20 days after the final date for filing exceptions. Any new operation to be authorized by the recommended order herein if it becomes effective may not be commenced until such time as the certificate, permit, or license has actually been issued. The certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice to that effect, signed by the Secretary of the Commission has been received.

Appendix E

In the matter of Docket No. 20

Hudson Trail Transit Lines, Inc., Passenger
Service Between, N.J.

Decided

In the matter of Docket No. 20, public convenience and necessity required for regular operations by applicant as a common carrier by motor vehicle of passengers and their baggage, and of express and newspapers when moving in the same vehicle with passengers, over a certain regular route between specified points in New Jersey and New York. Issuance of a certificate granted upon compliance by applicant with certain conditions.

In the matter of Docket No. 20 and Docket No. 20

For applicant

For protestants

Appendix E

Edward F. Bowe - last appearance in No. MC-628 (Sub-No. 94)

Messrs. R. J. Wellington, Rudolf E. Wellington, and Edward F. Bowe - last prehearing conference in certain of the proceedings.

Rates and Charges

Representative for Joint Board No. 2 Consisting of William L. Hemmendinger of New Jersey and Harold N. Wilson of New York

By three separately filed applications, as amended at the hearing, Garden State Transit Lines, Inc., Massachusetts Transit Companies, a corporation, and Interstate Transportation Co., Inc., seek authority to restrict certain certificates of passengers and their baggage, and of express and newspapers in the same vehicle with passengers, between New York, N. Y., and Saddle Brook, N. J., over regular routes, as set forth in Appendix I, II, and III hereto.

The applications were referred to Joint Board No. 2 for hearing and the representatives of the applicants called the cases. Several protests were received. The applications were handled at a consolidated hearing on November 13, 14, 15, 1962, at Newark, N. J. Each applicant appeared and put forth the other applications.

The only protested authority which is part of the three applications should be authorized between Saddle Brook and New York, N. Y., Garden State proposes to operate between such points via a specified interim

The State of New York has moved to dismiss the proceeding on the grounds that [illegible] the purpose of the hearing.

route involving use of the George Washington Bridge with pickup or discharge of passengers at 178th Street and Broadway, in New York City. In addition to such service, Manhattan Transit and Inter-City each also would provide a so-called downtown service via the Lincoln Tunnel originating and terminating at the New York Port Authority Bus Terminal at 41st Street and 8th Ave., in Manhattan. The respective applicants expect to operate numerous daily schedules between the points involved (beginning in the early morning and extending to late at night), and the proposed service would be integrated with, and operated in conjunction with, applicants existing operations between New Jersey and New York City.

Each applicant presented evidence concerning its presently authorized operations, its equipments, and financial data with reference to its ability to undertake the proposed service. It is evident that, on the basis of the equipment now operated or available to applicants, each will not require more than possibly one or two additional pieces of equipment to provide the considered service. The experience of the proposed carriers and the financial statements indicate that the three applicants are qualified to conduct the proposed service.

No. MC-92920 (Sub-No. 3)

A number of persons appeared in support of the applications. Although only two of the applicants (Garden State and Inter-City) presented public witnesses, it may be noted that each witness stressed that it is of no importance for those which carries receive authority since those interest concerned only the availability of the proposed service. Arrow Fasteners Company, Arrow, of Saddle Brook, is manufacturer of stapling machines, which

employs some 300 persons, is one of the strongest supporters of the proposed service. About two-thirds of its employees reside in or near Saddle Brook and the remainder are residents of New York City. Presently, Arrow leases two buses from Garden State for which it (Arrow) employs its own drivers. These buses are used to pick up its employees in uptown New York (175th Street), from which point they are transported in the morning, (5 days a week) to Arrow's plant in Saddle Brook, arriving at the plant before 8:00 a.m. In the afternoon (about 4:30 p.m.), they are returned to the same location in New York. This service, which is provided to employees without cost on their part, involves an expenditure of some $25,000 annually by Arrow. It is offered as an inducement to its employees in view of the difficulty of obtaining personnel for its plant. However, Arrow would prefer to discontinue such proprietary operations and it would welcome Garden State or some other carrier furnishing the transportation service from and to Manhattan. Four employees of Arrow testified in support of the proposed service (in addition to the evidence offered by Arrow's management). The gist of their testimony is that they rely on public transportation for movement from uptown Manhattan to the plant and return; that, while they are satisfied with the service provided by Arrow, they would require other means of travelling to and from the plant if Arrow's service is discontinued; and that they would expect to utilize the proposed service of Garden State or that of the other applicants should it be authorized.

Two employees of the Marriott Motor Hotel in Saddle Brook favor the proposed operation due to the absence of a direct motor carrier service between the said hotel

and Manhattan. Presently, the hotel operates a station wagon which is used to pick up passengers which arrive (or depart from) the bus stop on Route 46. It would prefer to eliminate this courtesy service and have its guests arrive and leave by a for-hire bus service operating to and from its premises. The hotel would consider it advantageous to have a service which would permit travel to both uptown and downtown Manhattan. The latter stop would be particularly convenient for those guests interested in entertainment and shopping in New York. The particular carrier or carriers that may be authorized to perform such service is of no importance to the hotel.

American Book Stratford Press operates a plant in Saddle Brook (about a third of a mile from Saddle River Road), employing approximately 350 persons. Its business is the production of books and it also does printing. Its location is adjacent to the plant of Arrow. Its New York employees generally travel in car pools, but the company's representative believes it would be helpful if a convenient for-hire bus service were available between its plant and Manhattan (both with respect to uptown and downtown sections of the city). Its interest is in the availability of a direct motor carrier service to and from New York City, regardless of the carrier performing the operation.

Four other individuals from Saddle Brook appeared in support of the proposed service. One of these is the mayor of Saddle Brook, who is also an employee of a large corporation in the area. He indicated that it is a matter of considerable concern to his community to have available adequate transportation facilities for its resi-

dents and workers. He feels it would stimulate travel to and from Manhattan to have a dependable interstate service available. He expressed the view that the Township Council was inclined to favor applicant Garden State because that carrier also agreed to provide intrastate service which was an important factor in the decision to favor Garden State over other carriers who may not be interested in a local type of service. The executive secretary of Saddle Brook Chamber of Commerce, whose membership is interested in the industrial development of Saddle Brook, pointed out the necessity for adequate transportation facilities as a means of attracting labor. In this regard, a meeting was held in January 1967 at which time representatives of various motor carriers were present (including certain of the applicants), to consider the matter of service between Saddle Brook and New York. Other meetings of the Chamber of Commerce have been held, as well, in the endeavor to resolve the issue. The witness urged that a direct and convenient bus service, such as here involved, would prove beneficial and is desired.

Two residents of Saddle Brook, are interested in the proposed service because their husbands have occasion to travel to New York City in connection with their employment. One of such witnesses resides on Weldon Road, which is one block east of the junction of Mayhill and Market Streets. The other resides on Finnegan Street, which is a block south of Market Street and a block east of Mayhill Street. In the morning each of the wives presently use the family car to drive her husband to the bus stop at Rochelle Avenue and Market Street where he boards the Inter-City bus for the trip to Manhattan. In the evening, the wives meet their husbands at the same

stop for the return trip home by car. They wish to be relieved of the necessity to take their husbands to and from this bus stop daily, and consider that the proposed service would be more convenient by eliminating such trips. In the absence of their own automobile; it would also avoid the need of walking for a distance to and from the bus stop. One of such witnesses is primarily interested in the service to and from downtown Manhattan rather than the uptown service. Both are interested in a satisfactory bus service and are not concerned with the particular carrier that may be authorized to provide such service.

Discussion and Conclusions.

As noted, each of the three applicants herein seeks to provide a bus service between Saddle Brook and New York City, and evidence was adduced to show that numerous schedules would be made available for that purpose. The evidence adduced by the supporting witnesses amply demonstrates that the proposed service would be responsive to a public need and is in the furtherance of the public interest. It is further apparent that the witnesses are essentially interested in a reliable and adequate service and that their utilization of any service authorized will not depend on which applicant receives the authority. In the opinion of the joint board, it may be noted at the outset that the number of passengers reasonably expected to be available and likely to patronize the service would be sufficient to warrant authorizing one of the applicants to perform the operation, but is insufficient to justify a grant to additional carriers. The joint board is of the view that the equities of the situation favor Inter-City as the recipient of the considered authority. That applicant

is presently operating between Saddle Brook and New York City via (1) George Washington Bridge, and (2) the Lincoln Tunnel. Inter-City now has considerable service terminating at Market Street and Saddle River Road (in Saddle Brook) and presently serves a considerably larger portion of Saddle Brook than does Garden State or Manhattan Transit. The proposed operation would represent but a relatively small extension of Inter-City's present operation and would tie in conveniently and economically with that applicant's existing service. By way of illustration, Inter-City's present route is only a half mile from Marriott Hotel, and about 6 blocks each from the plants of Arrow and American Book Stratford Press. Everything considered, it is the opinion of the joint board that the Inter-City application should be granted and that those of the remaining two applicants should be denied. It does not appear that the granting of the said application will have a material adverse effect on any existing carriers.

Upon consideration of all evidence of record, the joint board finds, in No. MC-668 (Sub-No. 91), that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of passengers and their baggage, and of express and newspapers when moving in the same vehicle with passengers, (1) between Saddle Brook, N. J., and New York, N. Y., and (2) between points in Saddle Brook, over specified routes, and serving the points as described in Appendix III hereto.

The joint board further finds that applicant in No. MC 668 (Sub-No. 91) is fit, willing, and able properly to perform such service and to conform to the requirements of

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the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that an appropriate certificate should be issued to such applicant.

The joint board further finds, in Nos. MC-69260 (Sub-No. 5) and MC-3700 (Sub-No. 55), that each applicant has failed to establish that the present or future public convenience and necessity require the proposed operations; and that the applications should be denied.

In view of the findings herein, the joint board recommends that the appended order be entered.

By joint Board No. 3.

(Signature) WILLIAM L. HUMPHREYS

Appendices I, II and III eliminated, since they appear in the Commission report.

Recommended by joint board No. 3 composed of William L. Humphreys of New Jersey and Harold N. Weber of New York.

(Signature) WILLIAM L. HUMPHREYS

ORDER

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the day of , A. D. 19

No. MC-69260 (Sub-No. 5)

GARDEN STATE TRANSIT LINES, INC., EXTENSION—SADDLE BROOK, N. J.

Appendix E

No. MC-3700 (Sub-No. 55)

MANHATTAN TRANSIT COMPANY, EXTENSION—
SADDLE BROOK, N. J.

No. MC-668 (Sub-No. 91)

INTER-CITY TRANSPORTATION CO., INC., EXTENSION—
SADDLE BROOK, N. J.

Investigation of the matters and things involved in these proceedings having been made, said applications upon due notice having been heard by joint board No. 3, which board has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceedings having been duly submitted:

It is ordered, That upon full compliance with the requirements of sections 215, 217, and 221 (e) of the Interstate Commerce Act, and with our rules and regulations thereunder, a certificate be issued to applicant in No. MC-668 (Sub-No. 91) authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle of passengers and their baggage, and of express and newspapers in the same vehicle with passengers, between the points, over the routes, and in the manner described in the findings of said report.

It is further ordered, That unless compliance is made by applicant in No. MC-668 (Sub-No. 91) with the requirements of sections 215, 217, and 221 (e), of the act within 90 days after the date of service of a notice to the parties that this order has become effective as the order of the Commission, or within such additional time as may be authorized by the Commission, the grant of authority

made in said report shall be considered as null and void and the application in No. MC-668 (Sub-No. 91), shall stand denied in its entirety effective upon the expiration of the said compliance time.

It is further ordered, That the applications in Nos. MC-69260 (Sub-No. 5), and MC-3700 (Sub-No. 55) be, and they are hereby denied.

And it is further ordered, That this order shall be effective on

By the Commission, division 1.

H. NEIL GARSON
Secretary

[SEAL]

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SUPREME COURT, U. S.

No. 1323

FILED
APR 13 1970
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1969

GARDEN STATE TRANSIT CO., INC., APPELLANT

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MOTION TO AFFIRM

ERWIN N. GRISWOLD,
Solicitor General,

RICHARD W. MCLAREN,
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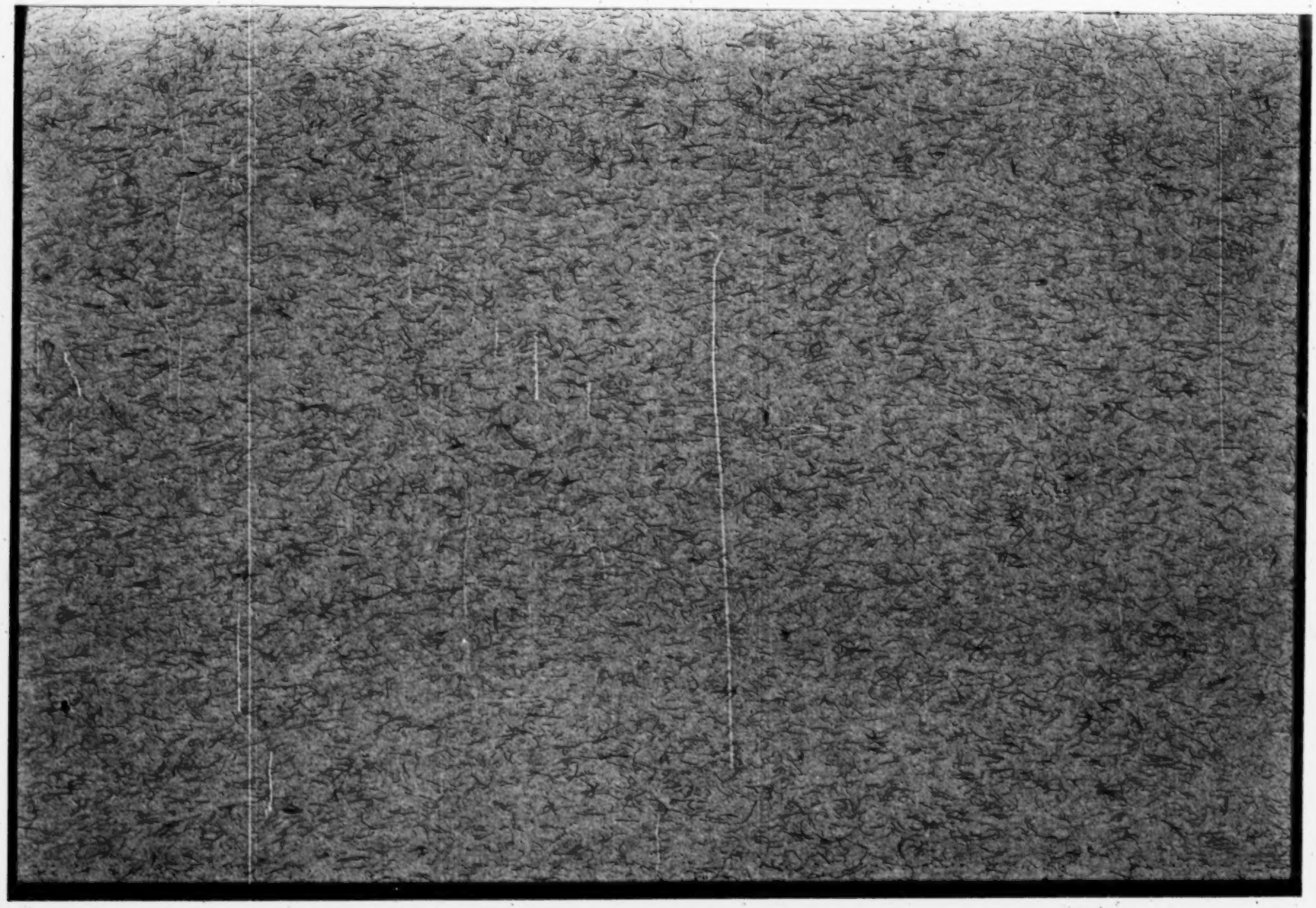

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1323

GARDEN STATE TRANSIT CO., INC., APPELLANT

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of a three-judge district court (J.S. App. B, 3a-4a) dismissing an action brought to set aside the report and

order of the Interstate Commerce Commission (J.S. App. C, 5a-15a) which denied appellant's application for a motor common carrier certificate pursuant to Section 207 of the Interstate Commerce Act (49 U.S.C. 307).

In 1966 appellant applied to the Commission for authority to transport passengers by bus between New York City and Saddle Brook, New Jersey, a suburban locality with a population of about 18,000 (J.S. App. C, 8a). The transit time involved is about 20 or 30 minutes, depending upon the route taken (J.S. App. C, 8a). Two carriers presently provide bus service between Saddle Brook and New York City (*ibid.*). Both opposed appellant's application, and both filed applications for enlarged authority in the event that the Commission found a need for additional service (J.S. App. C, 6a, 8a, 10a).

The three applications were considered in a consolidated hearing before the Commission's joint board (see 49 U.S.C. 305), which recommended that appellant's application be denied and that the application of one of the other two carriers be granted (J.S. App. E, 26a-28a). Upon review, Division 1 of the Commission denied all three applications, finding no public need for the proposed service. It noted that the witnesses supporting the applications relied upon their desire for service at points no more than five or six blocks from existing bus routes (J.S. App. C, 10a). Noting further that Saddle Brook is "a relatively compact area," the Division found that "the small measure of additional convenience that might

accrue to some persons if a bus route should be located five blocks nearer to their individual points of interest does not persuade us that any real inadequacies exist in the services that are presently available" (J.S. App. C, 11a).

In describing appellant in its report, Division 1 pointed out that its current operations were mostly in charter service and that, if its application were granted, appellant would receive the incidental authority to provide charter service originating in New York City as well as in Saddle Brook (J.S. App. C, 9a).[1]

The three-judge district court below unanimously affirmed, holding that the Commission's decision was rational and supported by substantial evidence (J.S. App. B, 3a-4a).

ARGUMENT

The decision of the court below is correct, and the instant appeal presents no substantial question warranting plenary review. It has long been established that the Commission has broad discretion in determining what the public convenience and necessity require. See, *e.g.*, *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65; *United States* v. *Detroit Navigation Co.*, 326 U.S. 236, 241. Here the Commission denied appellant's application upon determining that the "small measure of additional conveni-

[1] Appellant would have obtained the incidental charter authority because its application was filed before January 1, 1967 (see 49 U.S.C. 308(c)).

ence," which the proposed service would provide by having a route a few blocks nearer the supporting witnesses' "individual points of interest," does not justify a finding that the existing service is inadequate to meet the public convenience and necessity. That determination is, we submit, well within the Commission's range of discretion.

Consideration of the incidental charter authority which appellant would have obtained had its application been granted could not have been, as appellant asserts (see J.S. 4, 15-16), a crucial factor in the Commission's decision since its determination was expressly based upon the adequacy of the existing service between New York City and Saddle Brook. In this connection, it should be noted that the Commission denied all three of the applications, and thus granted no additional authority at all. Finally, since the Commission was warranted in finding the existing service to be adequate, this appeal does not present the question which appellant seeks to raise (see J.S. 3, 7-9) concerning the relevance of the National Transportation Policy.[2]

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[2] Although appellant also contends (J.S. 10) the Commission was obliged to explain in detail why it denied appellant's petition for reconsideration (J.S. App. D, 16a-17a), it is well settled that the agency need not elaborate its reasons for denying such a petition. See, *e.g.*, *Carolina Scenic Coach Lines* v. *United States*, 59 F. Supp. 336, 337-38 (W.D. N.C.), 326 U.S. 680; *Allen* v. *United States*, 187 F. Supp. 625, 630 (S.D. Fla.).

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Respectfully submitted.

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